

# FY2010 Appropriations: District of Columbia

Updated January 20, 2010

Congressional Research Service

<https://crsreports.congress.gov>

R40743

## Summary

On May 7, 2009, the Obama Administration released its detailed budget requests for FY2010, which included \$739.1 million in special federal payments to the District of Columbia. Approximately three-quarters—\$544.1 million—of the President's proposed budget request for the District would be used to support the courts and criminal justice system. The President also requested \$109.5 million in support of college tuition assistance and elementary and secondary education initiatives.

On May 12, 2009, the District of Columbia Council passed the city's FY2010 operating budget. The bill, which was not signed by the mayor, proposed an operating fund budget of \$8,917.8 million, and included \$1,433.1 million in enterprise funds. However, on July 17, 2009, the mayor submitted a revised budget to address a growing budget shortfall currently projected at \$150 million for FY2010. This delay in the submission of a budget for congressional review is due in large part to declining revenue projections related to the current economic recession. According to the mayor and the city's chief financial officer, the city faces the task of closing a \$603 million budget gap, including a \$453 million shortfall in its current FY2009 budget and a \$150 million projected shortfall for FY2010. In the absence of a formal submission of the city's budget, Congress has begun consideration of special federal payments and general provision components of the District appropriations act.

On July 8, 2009, the Senate Appropriations Committee reported its version of the Financial Services and General Government Appropriations Act for FY2010, S. 1432 with an accompanying report (S.Rept. 111-43). As reported, the bill recommends \$727.4 million in special federal payments to the District. This is \$40 million less than recommended by the House, and \$12 million less than requested by the Administration. On July 16, 2009, the House approved the Financial Services and General Government Appropriations Act for FY2010, H.R. 3170, by a vote of 219 to 208 (Roll no. 571). The bill included \$768.3 million in special federal payments to the District. This was \$29.2 million more than requested by the Administration and \$25.9 million more than appropriated for FY2009.

On October 1, 2009, President Obama signed, P.L. 111-68, Continuing Appropriations Resolution for FY2010. The act included a provision (Division B, Sec. 126) allowing the District of Columbia government to spend locally generated funds at a rate set forth in the budget approved by the District of Columbia on August 26, 2009.

On December 16, 2009, President Obama signed into law the Consolidated Appropriations Act for FY2010, P.L. 111-117, which included \$752.2 billion in special federal payments to the District of Columbia. The act included significant changes in a number of controversial provisions related to medical marijuana, needle exchange, and abortion services. P.L. 111-117 lifts the prohibition on the use of District funds to: provide abortion services, regulate and decriminalize the medical use of marijuana, and support a needle exchange program to stop the spread of AIDS and HIV infections. Removal of these so called social riders had been long sought by District officials who viewed them as antithetical to the concept of home rule.

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The authority for congressional review and approval of the District of Columbia's budget is derived from the Constitution and the District of Columbia Self-Government and Government Reorganization Act of 1973 (Home Rule Act).<sup>1</sup> The Constitution gives Congress the power to "exercise exclusive Legislation in all Cases whatsoever" pertaining to the District of Columbia. In 1973, Congress granted the city limited home rule authority and empowered citizens of the District to elect a mayor and city council. However, Congress retained the authority to review and approve all District laws, including the District's annual budget. As required by the Home Rule Act, the city council must approve a budget within 56 days after receiving a budget proposal from the mayor.<sup>2</sup> The approved budget must then be transmitted to the President, who forwards it to Congress for its review, modification, and approval.<sup>3</sup>

**Table 1. Status of District of Columbia Appropriations, FY2010**

Subcommittee Markup		House Report	House Passage	Senate Report	Senate Passage	Conf. Report	Conference Report Approval		Public Law
House	Senate						House	Senate	
6/25/09	7/8/09	—	7/16/09	—	—	12/8/2009	12/10/2009	12/13/2009	12/16/2009
H.R. 3170	S. 1432	H.Rept. 111-202	219-208	S.Rept. 111-43	—	H.Rept. 111-366	221-202	57-35	P.L. 111-117

## FY2010 Budget Request

District of Columbia appropriations acts typically include the following three components:

1. *Special federal payments* appropriated by Congress to be used to fund particular initiatives or activities of interest to Congress or the Administration.
2. The *District's operating budget*, which includes funds to cover the day-to-day functions, activities, and responsibilities of the government, enterprise funds that provide for the operation and maintenance of government facilities or services that are entirely or primarily supported by user-based fees, and long-term capital outlays such as road improvements. District operating budget expenditures are paid for by revenues generated through local taxes (sales and income), federal funds for which the District qualifies, and fees and other sources of funds.
3. *General provisions* are typically the third component of the District's budget reviewed and approved by Congress. These provisions can be grouped into several distinct but overlapping categories with the most predominant being provisions relating to fiscal and budgetary directives and controls. Other provisions include administrative directives and controls, limitations on lobbying for statehood or congressional voting representation, congressional oversight, and congressionally imposed restrictions and prohibitions related to social policy.

<sup>1</sup> See Article I, Sec. 8, clause 17 of the U.S. Constitution and Section 446 of P.L. 93-198, 87 Stat. 801.

<sup>2</sup> 120 Stat. 2028.

<sup>3</sup> 87 Stat. 801.

## The President's Budget Request

On May 7, 2009, the Obama Administration released its detailed budget requests for FY2010. The Administration's proposed budget included \$739.1 million in special federal payments to the District of Columbia, which was slightly lower than the District's FY2009 appropriation of \$742.4 million. Approximately three-quarters (\$544.1 million) of the President's proposed budget request for the District would have been targeted to the courts and criminal justice system. This included:

- \$248.4 million in support of court operations;
- \$52.2 million for Defender Services;
- \$203.5 million for the Court Services and Offender Supervision Agency for the District of Columbia, an independent federal agency responsible for the District's pretrial services, adult probation, and parole supervision functions;
- \$1.8 million for the Criminal Justice Coordinating Council;
- \$37.3 million for the public defender's office; and
- \$500,000 to cover costs associated with investigating judicial misconduct complaints and recommending candidates to the President for vacancies to the District of Columbia Court of Appeals and the District of Columbia Superior Court.<sup>4</sup>

The President's budget request also included \$109.5 million in support of education initiatives, including \$74.4 million to support elementary and secondary education and \$35.1 million for college tuition assistance. This represented 17% of the Administration's budget request.

## District's Budget

District revenues, like those of most local governments and states, have been negatively affected by the current economic recession. On March 20, 2009, the mayor of the District of Columbia submitted a proposed budget to the District of Columbia Council. On May 12, 2009, the council approved a FY2010 budget that included \$8.9 billion in operating funds, \$1.4 billion in enterprise funds, and \$631.6 million in capital outlays. In June the District's chief financial officer issued 2009 revenue estimates that identified a projected \$340 million budget gap, including a \$190 million shortfall in FY2009 and a \$150 million budget gap for FY2010.<sup>5</sup> On July 16, 2009, the mayor noted that the projected budget shortfall had grown to \$603 million, including a \$453 million shortfall in FY2009 and a \$150 million projected budget gap for FY2010.<sup>6</sup> He also outlined proposals to address the FY2009 and FY2010 revenue shortfalls, including the reallocation or conversion of previous years' unspent dedicated tax revenues to local funds, agency spending reductions and savings, the use of federal stimulus funding from the American Recovery and Reinvestment Act, the sale of District assets, and the use of the city's contingency reserve fund, which must be replenished within two years.<sup>7</sup> Because of efforts to close the budget gap, District officials did not complete final action on the general fund budget for FY2010 until

<sup>4</sup> This includes \$295,000 to the Commission on Judicial Disabilities and Tenure and \$205,000 to the Judicial Nomination Commission.

<sup>5</sup> Government of the District of Columbia, Office of the Chief Financial Officer, *June 2009 Revenue Estimates*, Washington, D.C., June 22, 2009, <http://newsroom.dc.gov/show.aspx/agency/cfo/section/2/release/17431>.

<sup>6</sup> Executive Office of the Mayor of the District of Columbia, "Fenty Outlines Proposal to Close District's Budget Gap," press release, July 16, 2009, <http://dc.gov/mayor/news/release.asp?id=1640&mon=200907>.

<sup>7</sup> Ibid.

late into the fiscal year. On August 26, 2009, the mayor signed into law the District of Columbia Budget Request Act for FY2010, D.C. Act 18-188. While city officials developed a FY2010 budget to address the projected revenue shortfall, both the House and the Senate took up consideration of other components of the District of Columbia appropriations act, namely, special federal payments and general provisions.

## **Congressional Action**

Congress not only appropriates federal payments to the District to fund certain activities, but also reviews, and may modify, the District's entire budget, including the expenditure of local funds as outlined in the District's Home Rule Act. Since FY2006, the District's appropriations act has been included in a multi-agency appropriations bill; before FY2006 the District budget was considered by the House and the Senate as a stand-alone bill. It is currently included in the Financial Services and General Government Appropriations Act.

### **House Bill**

On June 25, 2009, a House subcommittee conducted a markup of the Financial Services and General Government Appropriations Act of 2010, H.R. 3170, and forwarded the bill to the Appropriations Committee for its consideration. On July 10, 2009, the committee reported out the bill (H.Rept. 111-202), which included \$768.3 million in special federal payments to the District. This was \$29.2 million more than requested by the Administration and \$25.9 million more than appropriated for FY2009. The bill included a substantial increase (\$20 million) above the amount requested by the Administration for court operations. The bill also would have directed \$20 million in additional funding to support the District of Columbia Public Schools while reducing funding for school vouchers by almost \$2 million. On July 16, 2009, the House approved H.R. 3170 by a vote of 219 to 208 (Roll no. 571).

### **General Provisions**

The House bill included several general provisions governing budgetary and fiscal operations and controls including prohibiting deficit spending within budget accounts, establishing restrictions on the reprogramming of funds, and allowing the transfer of local funds to capital and enterprise fund accounts. In addition, the bill would have required the city's Chief Financial Officer to submit a revised operating budgets for all District government agencies and the District public schools within 30 days after the passage of the bill.

The House bill also included several general provisions relating to statehood or congressional representation for the District, including provisions that would have continue prohibiting the use of *federal funds* to:

- support or defeat any legislation being considered by Congress or a state legislature;
- cover salaries, expenses, and other costs associated with the office of Statehood Representative and Statehood Senator for the District of Columbia; and
- support efforts by the District of Columbia Attorney General or any other officer of the District government to provide assistance for any petition drive or civil action seeking voting representation in Congress for citizens of the District.

In addition, the bill proposed significant changes in a number of controversial provisions (social riders) that city officials had sought to eliminate or modify, including those related to medical marijuana, needle exchange, and abortion services. Despite objections raised by Republican Members of the House, the bill was brought to the floor under a restrictive rule (H.Res. 644) that did not allow Members to offer amendments on several controversial provisions related to same-sex marriage, medical marijuana, abortion, and needle exchange. As passed by the House, H.R. 3170 proposed retaining the prohibition on the use of federal funds, but recommended lifting the prohibition on the use of District funds to:

- provide abortion services; and
- regulate the medical use of marijuana.

The bill also would called for eliminating the prohibition on the use of both federal and District funds to support a needle exchange program so long as the distribution of sterile hypodermic syringes was not conducted within 1,000 feet of certain public facilities or youth-oriented activity centers, including schools, colleges and universities, parks, playgrounds, and recreational centers. The House-passed provisions represented a lifting of restrictions on the use of District and federal funds that were put in place when Republicans controlled the House. Removal of these so-called social riders has been long sought by District officials who viewed them as antithetical to the concept of home rule.

## Senate Bill

On July 8, 2009, the Senate Appropriations Committee reported S. 1432, its version of the Financial Services and General Government Appropriations Act for FY2010, with an accompanying report (S.Rept. 111-43). As reported, the bill recommended \$727.4 million in special federal payments to the District. This was \$40 million less than recommended by the House, and \$12 million less than requested by the Administration. The bill included \$10 million more in funding for court operations than recommended by the Administration. It would have appropriated an additional \$21 million in funding to support the District of Columbia Public Schools while increasing funding for school vouchers by almost \$1 million.

## General Provision

The Senate bill's general provisions mirrored some of the language included in the House bill. Like the House bill, S. 1432 included provisions governing budgetary and fiscal operations and controls. It also included provisions restricting the use of federal funds to support District statehood or congressional voting representation, including provisions that would have continue prohibiting the use of *federal funds* to:

- support or defeat any legislation being considered by Congress or a state legislature;
- cover salaries expenses and other costs associated with the office of Statehood Representative and Statehood Senator for the District of Columbia; and
- support efforts by the District of Columbia Attorney General or any other officer of the District government to provide assistance for any petition drive or civil action seeking voting representation in Congress for citizens of the District.

The bill also included changes in two provisions that city officials have sought to eliminate or modify. The bill proposed:



- lifting the prohibition on the use of District funds to provide abortion services, which was consistent with the House bill;
- maintaining the prohibition of the use of federal and District funds to regulate and decriminalize the medical use of marijuana (unlike the House bill it would have allowed the use of District funds to regulate medical marijuana); and
- maintaining the current prohibition on the use of federal funds to support a needle exchange program (unlike the House bill, which would have lifted the restriction on both federal and District funding for such a program).

## Enacted Provisions

Congress was unable to complete action on the Financial Service and General Government Appropriations Act for FY2010, H.R. 3170 and S. 1432, before the beginning of FY2010. Instead it passed a continuing budget resolution providing short term funding for federal agencies and priorities while working on a consolidated appropriations act for FY2010. On October 1, 2009, President Obama signed the Continuing Appropriations Resolution for FY2010, P.L. 111-68. The act included a provision (Division B, Sec. 126) allowing the District of Columbia government to spend locally generated funds (operating budget) at a rate set forth in the budget approved by the District of Columbia in D.C. Act 18-118.

On December 8, 2009, a conference committee reported H.R. 3288, the Consolidated Appropriations Act for FY2010, which included the FY2010 appropriations for the District of Columbia. The conference report, H.Rept. 111-366, which accompanied the bill, was approved by the House on December 10, 2009 and by the Senate on December 13, 2009. The bill was signed into law as P.L. 111-117, the Consolidated Appropriations Act of FY2010, by the President on December 16, 2009. The act included \$752.2 million in special federal payments to the District of Columbia. This is \$13.1 million more than requested by the President, \$24.8 million more than recommended by the Senate Appropriations Committee, but \$16.1 million less than recommended by the House. The act also included a substantial increase (\$12 million) above the amount appropriated in FY2009 for court operations. In addition, it directed \$20 million in additional funding to support the District of Columbia Public Schools, while reducing funding for school vouchers by almost \$1 million.<sup>8</sup>

## General Provisions

Consistent with the House bill, P.L. 111-117 included several general provisions relating to statehood or congressional representation for the District, including provisions that continued the practice of prohibiting the use of federal funds to:

- support or defeat any legislation being considered by Congress or a state legislature;
- cover salaries, expenses, or other costs associated with the office of Statehood Representative and Statehood Senator for the District of Columbia; and
- support efforts by the District of Columbia Attorney General or any other officer of the District government to provide assistance for any petition drive

<sup>8</sup> For a detailed discussion of school vouchers in the District of Columbia see CRS Report R40574, *District of Columbia Opportunity Scholarship Program: Implementation Status and Policy Issues*, by Rebecca R. Skinner and Erin D. Caffrey.



or civil action seeking voting representation in Congress for citizens of the District.<sup>9</sup>

While the statute extended these proscriptions, it also included significant changes in a number of controversial provisions related to medical marijuana, needle exchange, and abortion services.

P.L. 111-117:

- lifts the prohibition on the use of District funds to provide abortion services, but continues to restrict the use of federal funds for such purposes, except in cases of rape, incest, or threat to the mother's life;
- allows the use of District, but not federal, funds to regulate and decriminalize the medical use of marijuana; and
- eliminates the prohibition on the use of both federal and District funds to support a needle exchange program.

Removal of these so called social riders had been long sought by District officials who viewed them as antithetical to the concept of home rule.

## Special Federal Payments

Both the President and Congress may propose financial assistance to the District in the form of special federal payments in support of specific activities or priorities. The Obama Administration budget proposals for FY2010 included a request for \$739.1 million in special federal payments for the District of Columbia. The Financial Services and General Government Appropriations Act for FY2010, H.R. 3170, as reported by the House Appropriations Committee on July 10, 2009, included \$768.3 million in special federal payments to the District of Columbia. Two days earlier, on July 8, 2009, the Senate Appropriations Committee reported its version of the Financial Services and General Government Appropriations Act, S. 1432. The Senate bill recommended \$727.4 million in special federal payments for the District of Columbia. On December 16, 2009, President Obama signed into law the Consolidated Appropriations Act of FY2010, P.L. 111-117, which included \$752.2 million in special federal payments for the District of Columbia.

**Table 2** of this report shows details of the District's federal payments, including the FY2009 enacted amounts, the amounts included in the President's FY2010 budget request, the amounts recommended by the House and Senate Appropriations Committees, and the amount enacted with the passage of P.L. 111-117.

**Table 2. District of Columbia Appropriations, FY2009-FY2010: Special Federal Payment**

(in millions of dollars)

	<b>FY2009 Enacted</b>	<b>FY2010 Request</b>	<b>FY2010 House Passed</b>	<b>FY2010 Senate Committee</b>	<b>FY2010 Enacted</b>
Resident Tuition Support	\$35.1	35.1	35.1	35.1	35.1
Emergency Planning and Security	39.2	15.0	15.0	15.4	15.0

<sup>9</sup> For a detailed discussion of voting representation issues see CRS Report RL33830, *District of Columbia Voting Representation in Congress: An Analysis of Legislative Proposals*, by Eugene Boyd, and CRS Report RL33824, *The Constitutionality of Awarding the Delegate for the District of Columbia a Vote in the House of Representatives or the Committee of the Whole*, by Kenneth R. Thomas.

	FY2009 Enacted	FY2010 Request	FY2010 House Passed	FY2010 Senate Committee	FY2010 Enacted
District of Columbia Courts	248.4	248.6	268.9	258.5	261.2
Defender Services	52.5	52.5	55.0	55.0	55.0
Court Services and Offender Supervision Agency	203.5	212.4	212.4	212.4	212.4
Public Defender Service	35.7	37.3	37.3	37.3	37.3
Criminal Justice Coordinating Council	1.8	1.8	2.0	1.8	2.0
Judicial Commissions	—	0.5	0.5	0.5	0.5
Water and Sewer Authority	16.0	20.0	20.4	20.0	20.0
Office of the Chief Financial Officer	4.9	0.0	1.7	1.0	1.9
<i>Living Classrooms</i>	0.0	0.0	0.1	0.0	0.1
<i>Nat. Building Museum</i>	0.0	0.0	0.15	0.0	0.15
<i>Samaritan Ministry</i>	0.0	0.0	0.1	0.0	0.1
<i>Washington Center</i>	0.0	0.0	0.12	0.0	0.13
<i>Wash. Hosp. Center</i>	0.0	0.0	0.05	0.0	0.05
<i>Whitman-Walker Clinic</i>	0.0	0.0	0.1	0.0	0.1
<i>Youth Power Center</i>	0.0	0.0	0.1	0.0	0.0
<i>I Have a Dream Foundation</i>	0.8	0.0	0.0	0.0	0.0
<i>Boys and Girls Club Project Learn</i>	0.1	0.0	0.0	0.0	0.0
<i>Capital Area Food Bank</i>	2.0	0.0	0.0	0.0	0.0
<i>Children's National Medical Center</i>	2.9	0.0	0.0	1.0	1.0
<i>Literacy Education</i>	0.8	0.0	0.0	0.0	0.0
<i>Education Advancement Alliance</i>	0.2	0.0	0.0	0.0	0.0
<i>Everybody Wins</i>	0.2	0.0	0.0	0.0	0.0
<i>Excel-Automotive Workforce Dev.</i>	0.3	0.0	0.0	0.0	0.0
<i>National Children's Alliance</i>	0.2	0.0	0.0	0.0	0.0
<i>Safe Kids</i>	0.4	0.0	0.0	0.0	0.12
<i>Georgetown Metro Connection</i>	0.1	0.0	0.12	0.0	0.0
<i>The Perry School for Econ. Empowerment</i>	0.1	0.0	0.0	0.0	0.0

	FY2009 Enacted	FY2010 Request	FY2010 House Passed	FY2010 Senate Committee	FY2010 Enacted
Executive Office of the Mayor	3.4	0.0	0.0	0.0	0.0
<i>Marriage Initiative Matching Funds</i>	1.3	0.0	0.0	0.0	0.0
<i>Marriage Development Accounts</i>	2.1	0.0	0.0	0.0	0.0
School Improvement	54.0	74.4	74.4	75.4	75.4
<i>Public Schools</i>	20.0	42.2	42.2	42.2	42.2
<i>Public Charter Schools</i>	20.0	20.0	20.0	20.0	20.0
<i>Education Vouchers</i>	14.0	12.2	12.2	13.2	13.2
Jump Start Public School Reform	20.0	0.0	0.0	0.0	0.0
Consolidated Laboratory Facility	21.0	15.0	15.0	15.0	15.0
Central Library and Branches	7.0	0.0	0.0	0.0	0.0
D.C. National Guard	0.0	2.0	2.4	0.0	0.38
Perm. Supportive Housing	0.0	19.2	19.2	0.0	17.0
Disconnected Youth	0.0	5.0	5.0	0.0	4.0
Public Health Services	0.0	0.0	4.0	0.0	0.0
<b>Special Federal Payments (total)</b>	<b>742.5</b>	<b>738.8</b>	<b>768.3</b>	<b>727.4</b>	<b>752.2</b>

**Sources:** FY2009 Enacted, FY2010 Request, and FY2010 figures are taken from the H.Rept. 111-202 accompanying H.R. 3170, the Financial Services and General Government Appropriations Act, FY2010 and S.Rept. 111-43, accompanying S. 1432, the Financial Services and General Government Appropriations Act, FY2010. H.Rept. 111-366, accompanying H.R. 3288, the Consolidated Appropriations Act for FY2010. Columns may not equal the total due to rounding

## Local Operating Budget

On May 12, 2009, the District of Columbia Council approved a FY2010 operating budget that totaled \$8.9 billion dollars (**Table 3**). However, the mayor did not sign the bill because of concerns raised about declining revenue projections. On July 17, 2009, the mayor submitted a revised budget for the council's consideration. Two weeks later, on July 31, 2009, the city council approved a modified FY2010 budget in an effort to close what was then projected as a \$150 million budget gap. On August 26, the mayor signed into law the Second Fiscal Year 2010 Budget Request Act of 2009, D.C. Act 18-188. On October 1, 2009, President Obama signed the Continuing Budget Resolution for FY2010, P.L. 111-68. Section 126 of Division B of that act released the city's General Fund (operating budget) from further congressional review, allowing the city to spend its local funds as outlined in D.C. Act 18-188.

**Table 3. Division of Expenses: District of Columbia Funds: FY2010**  
(in millions of dollars)

	District	House	Senate	Final
<b>General Fund</b>				
Gov. Dir. & Support	428.652	—	—	401.877
Econ. Dev. and Reg.	454.093	—	—	433.467
Public Safety and Justice	1,312.807	—	—	1,280.872
Public Education	1,717.567	—	—	1,641.409
Human Support Services	3,394.390	—	—	3,336.590
Public Works	667.659	—	—	635.307
Financing and Other	942.737	—	—	911.255
<b>Gen. Oper. Exp.</b>	<b>8,917.905</b>	<b>8,858.278</b>	<b>8,858.278</b>	<b>8,640.777</b>
<b>Enterprise Fund</b>				
Bus. Improv. District	23.600	—	—	23.000
WASA	393.623	—	—	393.653
Wash. Aqueduct	54.356	—	—	54.356
Lottery	250.000	—	—	250.000
Retirement Board	30.622	—	—	30.622
Convention Center	97.059	—	—	91.974
Housing Fin. Agency	8.894	—	—	8.894
Univ. D.C.	142.528	—	—	129.855
Dept. Human Res. Trust Fund	2.400	—	—	—
Library Trust Fund	0.017	—	—	0.017
Unemploy. Ins. Trust Fund	251.000	—	—	251.000
Housing Prod. Trust Fund	51.329	—	—	51.329
Tax Increment Fin.	38.887	—	—	32.106
Baseball Fund	77.498	—	—	67.572
Repayment of PILOT	11.336	—	—	13.866
<b>Tot. Enterp. Fund</b>	<b>1,433.149</b>	<b>—</b>	<b>—</b>	<b>1,398.244</b>
<b>Tot. Oper. Exp.</b>	<b>10,351.054</b>	<b>—</b>	<b>—</b>	<b>10,039.021</b>
<b>Capital Outlay</b>				
Cap. Construction	631.552	1,038.889	1,038.889	1,323.821
—Consolidated Lab	5.000	—	—	—

	District	House	Senate	Final
—Highway Trust	—	54.893	54.893	54.893
<b>Tot. Cap. Outlay</b>	<b>631.552</b>	<b>1,038.889</b>	<b>1,038.889</b>	<b>1,323.821</b>

## Key Policy Issues

### Needle Exchange

Whether to continue a needle exchange program or whether to use federal or District funds to address the spread of HIV and AIDS among intravenous drug abusers is one of several key policy issues that Congress faced in reviewing the District's appropriations for FY2010. The controversy surrounding funding a needle exchange program touches on issues of home rule, public health policy, and government sanctioning and facilitating the use of illegal drugs. Proponents of a needle exchange program contend that such programs reduce the spread of HIV among illegal drug users by reducing the incidence of shared needles. Opponents of these efforts contend that such programs amount to the government sanctioning illegal drugs by supplying drug-addicted persons with the tools to use them. In addition, they contend that public health concerns raised about the spread of HIV and AIDS through shared contaminated needles should be addressed through drug treatment and rehabilitation programs. Another view in the debate focuses on the issue of home rule and the city's ability to use local funds to institute such programs free from congressional actions.

The prohibition on the use of federal and District funds for a needle exchange program was first approved by Congress as Section 170 of the District of Columbia Appropriations Act for FY1999, P.L. 105-277. The 1999 act did allow private funding of needle exchange programs. The District of Columbia Appropriations Act for FY2001, P.L. 106-522, continued the prohibition on the use of federal and District funds for a needle exchange program; it also restricted the location of privately funded needle exchange activities. Section 150 of the District of Columbia Appropriations Act for FY2001 made it unlawful to distribute any needle or syringe for the hypodermic injection of any illegal drug in any area in the city that is within 1,000 feet of a public elementary or secondary school, including any public charter school. The provision was deleted during congressional consideration and passage of the District of Columbia Appropriations Act of FY2002, P.L. 107-96. The act also included a provision that allowed the use of private funds for a needle exchange program, but it prohibited the use of both District and federal funds for such activities. At present, one entity, Prevention Works, a private nonprofit AIDS awareness and education program, operates a needle exchange program. The FY2002 District of Columbia Appropriations Act required such entities to track and account for the use of public and private funds.

During consideration of the FY2004 District of Columbia Appropriations Act, District officials unsuccessfully sought to lift the prohibition on the use of District funds for needle exchange programs. A Senate provision, which was not adopted, proposed prohibiting only the use of federal funds for a needle exchange program and allowing the use of District funds. The House and final conference versions of the FY2004 bill allowed the use of private funds for needle exchange programs and required private and public entities that receive federal or District funds in support of other activities or programs to account for the needle exchange funds separately.

The Financial Services and General Government Appropriations Act for FY2008, P.L. 110-161, contained language that modified the needle exchange provision included in previous

appropriations acts. The act allowed the use of District funds for a needle exchange program aimed at reducing the spread of HIV and AIDS among users of illegal drugs. The provision was a departure from previous appropriations acts which prohibited the use of both District and federal funds in support of a needle exchange program. In addition, the explanatory statement accompanying the act encouraged the George W. Bush Administration to include federal funding to help the city address its HIV/AIDS health crisis.

For FY2010, the District was again seeking to lift the restriction on the use of local funds to finance a needle exchange program. The President's budget proposal for FY2010 and S. 1432, as reported by the Senate Appropriations Committee, included language that would have retained the then current law that allowed the use of District funds, but prohibited the use of federal funds, in support of a needle exchange program. However, H.R. 3170 as approved by the House on July 16, 2009, would have allowed the use of District and federal funds for a needle exchange program. The bill proposed prohibiting the distribution of sterile hypodermic needles within 1,000 feet of certain youth-oriented public institutions and activity centers, including schools, colleges and universities, and recreational centers. Consistent with the Administration's budget proposal and the Senate Appropriations Committee's reported bill, P.L. 111-117 allows the use of District, but not federal, funds to administer a needle exchange program.

## Medical Marijuana

The city's medical marijuana initiative is another issue that engenders controversy. The District of Columbia Appropriations Act for FY1999, P.L. 105-277 (112 Stat. 2681-150), included a provision that prohibited the city from counting ballots of a 1998 voter-approved initiative that would have allowed the medical use of marijuana to assist persons suffering from debilitating health conditions and diseases, including cancer and HIV infection.

Congress's power to prohibit the counting of a medical marijuana ballot initiative was challenged in a suit filed by the DC Chapter of the American Civil Liberties Union (ACLU). On September 17, 1999, District Court Judge Richard Roberts ruled that Congress, despite its legislative responsibility for the District under Article I, Section 8, of the Constitution, did not possess the power to stifle or prevent political speech, which included the ballot initiative.<sup>10</sup> This ruling allowed the city to tally the votes from the November 1998 ballot initiative. To prevent the implementation of the initiative, Congress had 30 days to pass a resolution of disapproval from the date the medical marijuana ballot initiative (Initiative 59) was certified by the Board of Elections and Ethics. Language prohibiting the implementation of the initiative was included in P.L. 106-113 (113 Stat. 1530), the District of Columbia Appropriations Act for FY2000. Opponents of the provision contend that such congressional actions undercut the concept of home rule.

The District of Columbia Appropriations Act for FY2002, P.L. 107-96 (115 Stat. 953), included a provision that continued to prohibit the District government from implementing the initiative. Congress's power to block the implementation of the initiative was again challenged in the courts. On December 18, 2001, two groups, the Marijuana Policy Project and the Medical Marijuana Initiative Committee, filed suit in U.S. District Court, seeking injunctive relief in an effort to put another medical marijuana initiative on the November 2002 ballot. The District's Board of Elections and Ethics ruled that a congressional rider that has been included in the general provisions of each District appropriations act since 1998 prohibits it from using public funds to do preliminary work that would put the initiative on the ballot. On March 28, 2002, a U.S. district court judge ruled that the congressional ban on the use of public funds to put such a ballot initiative before the voters was unconstitutional.<sup>11</sup> The judge stated that the effect of the amendment was to restrict the plaintiff's First Amendment right to engage in political speech. The decision was appealed by the Justice Department, and on September 19, 2002, the U.S. Court of Appeals for the District of Columbia Circuit reversed the ruling of the lower court without comment. The appeals court issued its ruling on September 19, 2002, which was the deadline for printing ballots for the November 2002 general election. On June 6, 2005, the Supreme Court, in a six-to-three decision, ruled that Congress possessed the constitutional authority under the Commerce clause to regulate or prohibit the interstate marketing of both legal and illegal drugs. This includes banning the possession of drugs in states<sup>12</sup> and the District of Columbia that have decriminalized or permitted the use of marijuana for medical or therapeutic purposes.<sup>13</sup>

<sup>10</sup> Turner v. District of Columbia Board of Elections and Ethics, No. 98-2634 Civ. (D.D.C. Sept. 17, 1999; memorandum opinion).

<sup>11</sup> Marijuana Policy Project v. District of Columbia Board of Elections and Ethics, No. 01-2595 Civ. (D.D.C. Mar. 28, 2002; memorandum opinion, order and judgment).

<sup>12</sup> Eleven states allow medical marijuana usage or limit the penalty for such use: Alaska, California, Colorado, Hawaii, Maine, Maryland, Montana, Nevada, Oregon, Vermont, and Washington.

<sup>13</sup> *Gonzales v. Raich* 545 U.S. (2005). For additional information, see CRS Report RS22167, *Gonzales v. Raich: Congress's Power Under the Commerce Clause to Regulate Medical Marijuana*, by Todd B. Tatelman.



The President's budget proposal and S. 1432, as reported by the Senate Appropriations Committee, recommended maintaining the status quo of prohibiting the use of federal and District funds to decriminalize and regulate the medical use of marijuana. Conversely, H.R. 3170, as passed by the House, recommended lifting the prohibition on the use of both District and federal funds to legalize the use of marijuana for medical or therapeutic purposes. P.L. 111-117 removes the prohibition on the use of District funds for to regulate and legalize the medical use of marijuana.

## Abortion Provision

The public funding of abortion services for District of Columbia residents is a perennial issue debated by Congress during its annual deliberations on District of Columbia appropriations. District officials have cited the prohibition on the use of District funds as another example of congressional intrusion into local matters. Since 1979, with the passage of the District of Columbia Appropriations Act of 1980, P.L. 96-93 (93 Stat. 719), Congress has placed some limitation or prohibition on the use of public funds for abortion services for District residents. From 1979 to 1988, Congress restricted the use of federal funds for abortion services to cases where the mother's life was endangered or the pregnancy resulted from rape or incest. The District was free to use District funds for abortion services. When Congress passed the District of Columbia Appropriations Act for FY1989, P.L. 100-462 (102 Stat. 2269-9), it restricted the use of District and federal funds for abortion services to cases where the mother's life would be endangered if the pregnancy were taken to term. The inclusion of District funds, and the elimination of rape or incest as qualifying conditions for public funding of abortion services, was endorsed by President Reagan, who threatened to veto the District's appropriations act if the abortion provision was not modified.<sup>14</sup> In 1989, President George H.W. Bush twice vetoed the District's FY1990 appropriations act over the abortion issue. He signed P.L. 101-168 (103 Stat. 1278) after insisting that Congress include language prohibiting the use of District revenues to pay for abortion services except in cases where the mother's life was endangered.<sup>15</sup>

The District successfully sought the removal of the provision limiting District funding of abortion services when Congress considered and passed the District of Columbia Appropriations Act for FY1994, P.L. 103-127 (107 Stat. 1350). The FY1994 act also reinstated rape and incest as qualifying circumstances allowing for the public funding of abortion services. The District's success was short-lived, however. The District of Columbia Appropriations Act for FY1996, P.L. 104-134 (110 Stat. 1321-91), and subsequent District of Columbia appropriations acts, limited the use of District and federal funds for abortion services to cases where the mother's life was endangered or cases where the pregnancy was the result of rape or incest.

Both H.R. 3170 and S. 1432, proposed lifting the prohibition on the use of District funds to provide abortion services, but recommended continuing the prohibition on the use of federal funds for abortions. The Obama Administration proposed revising language included in previous years appropriations acts prohibiting the use of District and federal funds for abortion services, but would have essentially continue to restrict the use of public funds for abortion services except in cases of rape, incest, or the woman's health is threatened. The language proposed by the Administration, and included in its budget appendix, would have prohibit the use of federal funds

<sup>14</sup> "District Policies Hit Hard in Spending Bill," *Congressional Quarterly Almanac*, vol. XLIV (Washington: Congressional Quarterly, Inc., 1988), p. 713.

<sup>15</sup> D.C. Bill Vetoed Twice Over Abortion Funding," *Congressional Quarterly Almanac*, vol. XLV (Washington: Congressional Quarterly, Inc., 1989), p. 757.

for abortion services, including any health insurance plan that may be funded in part with federal funds. However, this restriction was not apply if the pregnancy was the result of rape or incest, or the woman suffered from a disorder, injury, condition, or illness that endangered her life. The provision included a clarifying clause that noted that the restriction on the use of federal funds would not prohibit the use of District or private funds, except the District's Medicaid matching fund contribution.<sup>16</sup> P.L. 111-117 lifts the prohibition on the use of District funds for abortion services, but maintains the restriction on the use of federal funds for such services except in cases of rape, incest, or a threat to the life of the mother.

## District of Columbia Opportunity Scholarship Program<sup>17</sup>

The Consolidated Appropriations Act for FY2004, P.L. 108-199, which combined six appropriations bills—including the FY2004 District of Columbia Appropriations Act—authorized and appropriated funding for the Opportunity Scholarship program, a federally funded school voucher program for the District of Columbia. It also provided funding for the District of Columbia Public Schools (DCPS) for the improvement of public education and for the State Education Office for public charter schools. The provision of federal funds for DCPS, public charter schools, and vouchers is commonly referred to as the “three-prong approach” to supporting elementary and secondary education in the District of Columbia.

More specifically, the Opportunity Scholarship program was enacted under the D.C. School Choice Incentive Act of 2003, which was included in P.L. 108-199. The Opportunity Scholarship program provides scholarships (also known as vouchers) to students in the District of Columbia to attend participating private elementary and secondary schools, including religiously affiliated private schools. Appropriations for the program were authorized through FY2008. While the program is no longer authorized, appropriations for the program were provided through FY2009 under the Omnibus Appropriations Act, 2009, P.L. 111-8, which are to be used to fund vouchers for *students currently enrolled in the program* for the 2009-2010 school year.

P.L. 111-8 specified that the use of any funds *in any act* for Opportunity Scholarships after the 2009-2010 school year shall be available only upon reauthorization of the program and the adoption of legislation by the District of Columbia approving such reauthorization. The Administration's FY2010 budget request proposed eliminating this restriction on funding and sought continued appropriations for the Opportunity Scholarship program, as well as school improvement funding for DCPS and public charter schools in the District of Columbia. H.R. 3288, the Consolidated Appropriations Act for FY2010, which was signed into law on December 16, 2009 as P.L. 111-117, appropriated \$42.2 million to DCPS, \$20 million to public charter schools, and \$13.2 million for Opportunity Scholarships. The act does place eligibility restrictions on Opportunity Scholarships, specifying that only students who received scholarships in the 2009-2010 school year may be eligible to receive additional funds for Opportunity Scholarships.

<sup>16</sup> Office of Management and Budget, *Budget of the United States; Appendix*, Washington, DC, May 16, 2009, p. 1209, <http://www.whitehouse.gov/omb/budget/fy2010/assets/oia.pdf>.

<sup>17</sup> This section was authored by Erin D. Caffrey. For more information on the DC Opportunity Scholarship Program, see CRS Report R40574, *District of Columbia Opportunity Scholarship Program: Implementation Status and Policy Issues*, by Rebecca R. Skinner and Erin D. Caffrey.

## **Author Information**

Eugene Boyd  
Analyst in Federalism and Economic Development  
Policy

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